



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 29, 1998

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR98-1354

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116338.

The City of Austin (the "city") received a request for "[a] list of all Health Department employees, by work site, who do not currently have an active AFSCME dues deduction from their pay check[s]." You assert that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.<sup>1</sup> *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld

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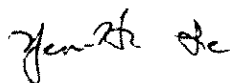
<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

After a review of your arguments and the submitted information, we conclude that the requested information reflects the employees' personal financial decision whether to have union dues withdrawn from their paychecks, and thus is excepted from public disclosure by common-law privacy. Open Records Decision No. 545 (1990). Thus, you must withhold the requested information pursuant to sections 552.101 and 552.102 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 116338

Enclosures: Submitted documents

cc: Mr. Alexander Johnson  
Union Representative  
AFSCME  
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(w/o enclosures)